

1 Mark E. Ellis - 127159
2 Anthony P. J. Valenti - 284542
3 ELLIS LAW GROUP LLP
4 1425 River Park Drive, Suite 400
5 Sacramento, CA 95815
Tel: (916) 283-8820
Fax: (916) 283-8821
mellis@ellislawgrp.com
avalenti@ellislawgrp.com

6 Attorneys for Defendant RASH CURTIS & ASSOCIATES

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8
9 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

10
11 SANDRA McMILLION, JESSICA ADEKOYA,
12 AND IGNACIO PEREZ, on Behalf of
13 Themselves and all Others Similarly Situated,

14 Plaintiffs,

15 v.

16 RASH CURTIS & ASSOCIATES,
17 Defendant.

Case No.: 4:16-cv-03396-YGR JSC

**DECLARATION OF MARK E. ELLIS IN
SUPPORT OF DEFENDANT RASH CURTIS
& ASSOCIATES' MOTION FOR
RECONSIDERATION OF MOTION FOR
SUMMARY JUDGMENT**

Date: January 30, 2018

Time: 2:00 p.m.

Ctrm: 1

Judge: Hon. Yvonne Gonzalez Rogers

18

19

20 I, Mark E. Ellis, declare:

21 1. I am an attorney at law duly licensed to practice before this Court, and I am the managing
22 partner in the law firm of Ellis Law Group LLP, attorneys of records for Defendant RASH CURTIS &
23 ASSOCIATES in the above matter. This declaration is based upon my own personal knowledge except
24 as to those matters stated upon information and belief, and as to those things I believe them to be true.
25 If called as a witness to testify to the matters asserted herein I would do so competently.

26 2. I offer this sworn declaration in support of Rash Curtis' Motion for Reconsideration of
27 its Motion for Summary Judgment in light of *ACA International v. Federal Communications
28 Commission*.

3. On June 20, 2017, I took the first part of Mr. Steve Kizer's deposition in the matter of *Rash Curtis & Associates v. Steve Kizer*, Solano County Superior Court, Case No. FCS048565. Attached hereto as **Exhibit A** is a true and correct copy of excerpts from the court reporter's deposition transcript.

4. On July 6, 2017, I took the second part of Mr. Kizer's deposition in the *Rash Curtis & Associates v. Kizer* matter. Attached hereto as **Exhibit B** is a true and correct copy of excerpts from the court reporter's deposition transcript.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed on March 30, 2018 in Sacramento, California.

/s/ Mark E. Ellis

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SOLANO

---oo---

RASH CURTIS & ASSOCIATES, INC.,)

Plaintiff,)

vs.) NO.FCS048565

STEVE KIZER, and DOES 1-10M)

Defendants.)

COPY

TUESDAY, JUNE 20, 2017

---oo---

Deposition of

STEVE KIZER

Reported By: SUZY S. BAKER, CSR No. 9361

BAKER

DEPOSITION REPORTING

■ P.O. Box 188229

■ Sacramento, CA 95818

■ Office (916) 446-0656

■ Fax (916) 446-8131

■ E-mail Bakerjsb@yahoo.com

1 A Yes.

2 Q And with Global Connect do you know
3 whether or not either the hardware or the
4 software had an automated dialing system that
5 either generated sequentially or randomly a
6 number? Do you know one way or the other?

12:07:29 PM 7 A I am going to tell you that my
8 understanding of that system, it did not
9 generate a number. Numbers had to be fed to
10 it.

11 Q Right. So your understanding --

12 A Uh-huh.

13 Q -- because I have read your deposition,
14 and this is exactly what you testified, is that
15 someone in management had to load a series of
16 numbers from various accounts into the system
17 and then it would dial. The system itself would
18 not generate the number, would it?

12:07:59 PM 19 A No. That is correct. Management had to
20 load the numbers in.

21 Q And, and, in fact, management would come
22 up with how it was going to fit a particular
23 campaign on a particular day and that was all
24 done by a manager, it was not done by the
25 computer system using an algorithm, was it?

1 A Correct.

12:08:26 PM 2 Q And in terms of prior expressed consent,
3 have you ever heard of that term?

4 A Uh-huh.

5 Q Yes?

6 A Yes.

7 Q What is that?

8 A That means we already have on file in
9 writing or verbally consent from somebody.

10 Q That's not it at all, is it, really? In
11 fact --

12 MR. FULTON: Well are you done with your
13 answer?

14 MR. ELLIS: Okay.

15 MR. FULTON: Please let him finish his
16 answer.

17 MR. ELLIS: I sure will. I'm sorry. I
18 apologize.

19 So you say -- what you understood prior
20 expressed consent to be is, repeat, repeat your
21 answer.

22 A That already on file with ourselves we
12:08:58 PM 23 would have consent in writing or verbally from
24 an individual for a said action, whatever that
25 might be.

1
2 **REPORTER'S CERTIFICATION OF CERTIFIED COPY**
3

4 I, SUZY BAKER, CSR No. 9361, a Certified
5 Shorthand Reporter in the State of California,
6 certify that the foregoing pages 1 through 107
7 constitute a true and correct copy of the original
8 deposition of STEVE KIZER, taken on Tuesday,
9 June 20, 2017.

10 I declare under penalty of perjury under the
11 laws of the State of California that the foregoing
12 is true and correct. I hereunto set my hand on
13 June 25, 2017.

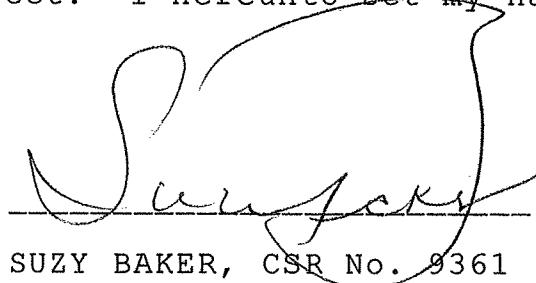
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16 SUZY BAKER, CSR No. 9361
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EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SOLANO

--oo--

RASH CURTIS & ASSOCIATES, INC.,)
Plaintiff,)
vs.) NO.FCS048565
STEVE KIZER, and DOES 1-10M)
Defendants.)
_____)

THURSDAY, JULY 6, 2017

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Continued Deposition of
STEVEN KIZER
(Volume 2)
(Pages 108-289)

Reported By: SUZY S. BAKER, CSR No. 9361

1 A I honestly never recall seeing that
2 document in any way, shape, or form.

3 Q Do you believe that I am not telling you
4 the truth?

5 A I didn't say that.

6 Q No, I am just kidding.

7 A Oh, I'm sorry. You know, it is what it
8 is. I don't, I don't recall ever seeing that
9 document.

10 Q Okay. Let's go to the next page which is
03:53:30 PM11 RCA-00021 and the subject is F1 vic dialer.

12 What is the F1 vic dialer?

13 A When a collector logs on to the dialer
14 there is campaigns that compopulate (verbatim)
15 in front of them and they would log in choosing
16 F1 as an actual campaign; it would be loaded
03:54:00 PM17 with phone numbers. They would log in and wait
18 until the account popped on their screen with
19 somebody on the other end.

20 Q Now the vic dialer was different than the
21 Global Connect?

22 A Yes.

23 Q All right. And, and the vic dialer, was
24 it somehow connected with the DAKCS system or
25 was it --

1
2 **CERTIFICATE OF REPORTER**
3

4 I, SUZY BAKER, CSR No. 9361 a Certified
5 Shorthand Reporter in and for the State of
6 California, hereby certify that the witness in the
7 foregoing deposition,

8 STEVEN KIZER,
9 was by me duly sworn to testify the truth, the
10 whole truth, in the within-entitled cause; that
11 said continued deposition was taken by me, a duly
12 certified shorthand reporter and a disinterested
13 person, at the time and place herein stated, and
14 was thereafter transcribed into typewriting, by
15 computer, under my direction and supervision.

16 I further certify that I am not of counsel
17 or attorney for either or any of the parties to
18 said deposition, nor in any way interested in the
19 outcome of the cause, and that I am not related to
20 any of the parties thereto.

21 IN WITNESS WHEREOF, I have hereunto set my
22 hand of July 18, 2017.

23
24 SUZY BAKER, CSR No. 9361
25